Supreme Court, U.S.
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NO. 94-211

IN THE
# Supreme Court of the United States
OCTOBER TERM, 1994

BENTON MUSSLEWHITE,
THE LAW OFFICES OF BENTON MUSSLEWHITE,
AND PETER MANANGKALANGI,
*Petitioners*,
v.
READING & BATES PETROLEUM COMPANY,
READING & BATES EXPLORATION CO., AND
READING & BATES DRILLING CO.,
*Respondents*.

**Corrected Petition For Writ Of Certiorari
To United States Court Of Appeals
For The Fifth Circuit**

## CORRECTED
## PETITION FOR WRIT OF CERTIORARI

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49 pp

## Questions Presented

Prior to this Court's opinion in *American Dredging v. Miller*, 114 S.Ct. 981 (1994), a federal district court enjoined the plaintiff and his attorney from "prosecuting" a state court maritime action because the federal court had previously dismissed a similar action on ground of forum non conveniens. While *Miller* was pending, the plaintiff's attorney moved to prevent dismissal of the state court action by filing a motion to retain. A federal district court found this retention motion a contempt of the underlying injunction and ordered the plaintiff's attorney confined in prison unless he agreed to dismiss his client's state court action. Thus, this petition raises two questions of significant conflict and exceptional importance:

1. Does a federal court have the power, consonant with due process, federalism, and the Anti-Injunction Act, to issue a contempt order which orders an attorney to dismiss his client's case in state court or go to jail?

2. Whether, if a federal court has such power, a federal court abuses such power when the court fails simply to continue the injunction in effect, without imposing contempt punishment, while the legal basis for issuing the injunction is under review by this Court, when it fails to recognize substantial compliance, enforces ambiguous orders, and modifies the injunction in the contempt hearing?

## LIST OF PARTIES

**Petitioners/Appellants/Defendants**

Benton Musslewhite
The Law Office of Benton Musslewhite
Peter Manangkalangi

**Respondents/Appellees/Plaintiffs**

Reading & Bates Petroleum Company
Reading & Bates Exploration Co.
Reading & Bates Drilling Co.

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**Corrected Petition For Writ Of Certiorari**
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## CORRECTED
## PETITION FOR WRIT OF CERTIORARI

Petitioners, Benton Musslewhite, The Law Offices of Benton Musslewhite, and Peter Manangkalangi, file this petition and brief to urge the Court to grant certiorari and review of the decisions below.

### Opinions Below

The opinion of the U.S. Court of Appeals for the Fifth Circuit is unreported and is reproduced at App. B, pp. 3a, 4a.

The contempt orders and judgments of the United States District Court for the Southern District of Texas are also unreported and are reproduced at Apps. C, pp. 5a-7a and D, pp. 8a-10a.

The underlying injunction judgment is unreported and is reproduced at App. E, pp. 11a, 12a, with the underlying injunctive order being reproduced at App. F, pp. 13a-21a

## Jurisdiction

This Court has jurisdiction to review a final judgment of a court of appeals pursuant to 28 U.S.C. § 1254(1). The final judgment was issued May 9, 1994, and the petition for panel rehearing was denied on June 16, 1994. The order denying such rehearing is reproduced at App. A, pp. 1a, 2a.

## Constitutional Provisions and Statutes

This case involves the due process requirements of the U.S. CONSTITUTION, amend. V and XIV; the Anti-Injunction Act, 28 U.S.C. § 2283; and Rule 65(d) of the F.R.C.P. The full text of these provisions is reproduced at Apps. G, p. 22a; H, p. 23a and I, p. 24a.

## Statement of the Case

This petition questions the limits of a federal court's power to order an attorney to dismiss his client's state court case or go to jail.

This case arose on June 21, 1977, when Peter Manangkalangi was severely injured during offshore oil well workover operations in the Java Sea, Indonesia. Mr. Manangkalangi first filed suit in federal court against the

Respondents, all United States corporations. That federal action was dismissed on the ground of forum non conveniens.

Mr. Manangkalangi, through his attorney, Benton Musslewhite, then filed suit in the Texas state court. Respondents removed the suit to federal court and the federal court remanded. Respondents then filed an action in federal court to enjoin the prosecution of the state court suit by Mr. Manangkalangi and his attorney, Mr. Musslewhite. Such new federal action was abated pending this Court's decision in *Chick Kam Choo v. Exxon*, 486 U.S. 140 (1988)[1]. After *Choo* was decided by this Court, the district court then addressed the question of issuing an injunction. Because *Choo* did not decide the issue of whether federal forum non conveniens law preempts state forum non conveniens law in state maritime actions, the district court relied upon the then-existing law of the Fifth Circuit and held that Mr. Manangkalangi's state action was preempted.[2] The district

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[1] *Chick Kam Choo* was based on almost identical facts. This Court dissolved the federal injunction over the state court suit, but did not decide whether the federal forum non conveniens doctrine preempted the subsequent maritime action in state court. Following this Court's recent opinion in *American Dredging Co. v. Miller*, 114 S.Ct. 981(1994), which held that federal forum non conveniens does not preempt state forum non conveniens law in maritime actions, the Texas Supreme Court upheld Madame Choo's right to bring her action in the Texas state court. *Exxon Corp. v. Choo*, 37 Tex.Sup.Ct.J. 914 (June 8, 1994).

[2] The Court observed that "the Fifth Circuit..... has ruled contrary to the Texas court in determining that 'federal maritime defense of forum non conveniens is constitutionally supreme in a maritime or Jones Act case over state laws that do not recognize this doctrine.' Ikospentakis, 918 F.2d at 180 (Ikospentakis v. Thalassic Steamship Agency, 918 F.2d 176 (5th Cir. 1990)), citing and endorsing its earlier holding in Exxon Corp. v. Chick Kam Choo, 817 F.2d 302 (5th Cir. 1987), rev'd on other grounds, 486 U.S. 140 (1988).....{T]his Court, which is bound to follow the Circuit, must conclude that Plaintiffs' (the Reading & Bates parties)

court then entered the following "permanent injunction":

> Defendants Peter Manangkalangi and his attorneys are PERMANENTLY ENJOINED from *prosecuting* Cause No. 83-75297 in the 164th Judicial District of Harris County, Texas or any claims arising from injuries suffered by Peter Manangkalangi on the offshore oil well workover operation in the Java Sea, Indonesia on June 21, 1977 in any state or federal court in this country.

Apps. E and F, pp. 11a, 12a, 23a; emphasis ours.

The state court proceedings lay dormant for over a year and a half. On June 28, 1993, the state court issued an order to show cause why the action should not be dismissed for want of prosecution. Although the state action was still stayed, Respondents moved, on July 2, 1993, for dismissal of the state court action. Before the time to reply to Respondents' motions had elapsed, the state court inadvertently dismissed the state court action.

Mr. Manangkalangi's attorney, Mr. Musslewhite, in an effort to preserve the status quo, filed a motion to retain the state court action[3]. Mr. Musslewhite's motion requested *only* that the state court action be retained on the docket pending the dispositive resolution of the preemption issue in

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motion for summary judgment and permanent injunction should be granted." App. F.

[3] The motion was styled Motion for New Trial, Rehearing, to Reconsider Dismissal and to Reinstate. See TEX.R.CIV.P. 165a. It included a specific request that the state court, once it reinstated, stay the proceedings in deference to the federal injunction.

*American Dredging Co. v. Miller*, 114 S.Ct. 981 (1994)[4]. Petitioners also filed a Rule 60(b) motion in federal court requesting the court to stay the proceedings pending this Court's decision in *Miller*.

On September 28, 1993, the state court vacated its improvident dismissal and reinstated the state action. On October 7, 1993, Respondents filed a motion in federal district court requesting that Petitioners be held in contempt of the injunction order for filing the retention motion in state court.

On December 10, 1993, the federal court held that the Petitioners filing of the retention motion constituted "prosecution" of the state court action and found Mr. Musslewhite in contempt of court. To purge the contempt, the federal court ordered Mr. Musslewhite to withdraw the retention motion in state court, to take actions necessary to dismiss the state case, and to pay Respondents' attorneys' fees and expenses.

On December 20, 1993, the federal court held a second hearing. At that hearing, Mr. Musslewhite explained that he was bound by ethical rules not to dismiss his client's case without his consent and that he had not been able to

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[4] *Miller* was not decided until February 23, 1994. *Miller* held that a federal forum non conveniens dismissal does not preempt a state maritime action. Thus, the *Miller* decision makes inescapable the conclusion that the original injunction entered in this case is without legal foundation.

secure his consent.[5] Mr. Musslewhite also argued that the filing of a retention motion to preserve the status quo was not "prosecution" of the state action.

The federal court found Mr. Musslewhite's failure to withdraw the retention motion and effect a dismissal violated the original injunction and the first contempt order. App. D, 8a-10a. The court ordered Mr. Musslewhite to be confined in jail, beginning December 22, 1993, until he purged himself of contempt by dismissing the state court action.

The Petitioners appealed the federal court's two contempt orders and the orders were stayed. See *Reading & Bates Petroleum Co., et al v. Benton Musslewhite, et al*, 14 F.3d 271 (5th Cir. 1994). On May 9, 1994, the Fifth Circuit affirmed without opinion. App. B, pp. 3a, 4a. On June 16, 1994, the Fifth Circuit denied Petitioners' request for panel rehearing and suggestion for rehearing en banc. App. A.

On July 7, 1994, the Fifth Circuit stayed the mandate until August 6, 1994, pending filing of this petition.

## Reasons for Granting the Writ

### I. The Fifth Circuit's Opinion Is In Direct Conflict With Numerous Circuits In Exceeding A Federal Court's Contempt Power

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[5] Even despite this Court's favorable disposition of the preemption issue in *Miller*, dismissal of the state action would be irretrievably prejudicial to Mr. Manangkalangi. The state action was filed at a time when the Texas "open court" statute, Sec. 71.031 of Texas Civil Practices and Remedies Code, permitted his suit. *See Dow Chemical Co. v. Alfaro*, 786 S.W.2d 674 (Tex. 1990). However, in 1993 the Texas legislature enacted Section 71.051 of the Texas Civil Practice & Remedies Code (effective September 1, 1993), which would probably bar his suit. Section 71.051 applies *only* to suits filed after the effective date.

The Fifth Circuit below affirmed the action of a federal district court which ordered an attorney to dismiss his client's state court case or go to jail. This contempt power which the federal court wielded below far exceeded the limits of a federal court's authority. The federal court's contempt orders violated the most basic tenets of due process, federalism, abstention and the Anti-Injunction Act.

A review of significant decisions reveals that the Fifth Circuit's opinion creates a significant conflict with other Circuits and with this Court and presents an exceptionally important issue with regard to the interplay between federal and state courts. This petition offers the Court the unique opportunity to address the limits of a federal court's power over state court actions.

### A. The Federal Court's Contempt Order, Ordering the Petitioner to Dismiss His Client's State Court Case Or Go To Jail Violated Due Process

Perhaps the most dangerous power possessed by federal judges in civil cases is the contempt power. It is a power whose abuses must be regularly checked. Justice Stewart, speaking for the Court in 1967, wrote:

> The judicial contempt power is a potent weapon. When it is founded upon a decree too vague to be understood it can be a deadly one.

*Int'l Longshoremen's Ass'n. v. Philadelphia Marine Trade Ass'n*, 389 U.S. 75, 76 (1967).

In this case, Mr. Musslewhite and his client were enjoined from "prosecuting" the state court case. Mr. Musslewhite made no attempt to "prosecute" the state court case. Rather, he merely filed a retention motion to preserve

the status quo in a state court case, pending resolution of the preemption issue upon which the injunction was based. When Mr. Musslewhite filed the retention motion, the federal court held him in contempt of the original "prosecuting" injunction and modified the injunction by ordering him to dismiss the state court case or go to jail. The Fifth Circuit's affirmance of these contempt orders raises a number of due process concerns.

First, the opinion below conflicts with numerous decisions which require that the injunction specify precisely what acts are forbidden. *See e.g. Armstrong v. Executive Office of President*, 1 F.3rd 1274, 1289 (D.C. Cir. 1993);[6] and *NBA Properties, Inc. v. Gould*, 895 F.2d 30, 32 (1st Cir. 1990) (Breyer, J.). The injunction order must be clear and unambiguous. *Int'l Longshoremen's Ass'n.*, 389 U.S. at 76. Any ambiguity is resolved in favor of the person charged with contempt. *NBA Properties, Inc.*, 895 F.2d at 34; *Project B.A.S.I.C. v. Kemp*, 947 F.2d 11, 16 (1st Circ. 1991). If an injunction order does not specify precisely what acts are forbidden, the person has not received adequate notice and due process is not satisfied. *See Common Cause v. NRC*, 674 F.2d 921, 927 (D.C. Cir. 1982).

Here, the injunction order did not define "prosecution." Neither Mr. Musslewhite nor his client were on notice that "prosecution" included retention of the case on

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[6] The Court in Armstrong noted:

> ...Thus, because the appellants were never directly ordered to promulgate new regulations, we must reverse the district court's contempt finding which was based in part on their failure to do so.

1 F.3d at 1289.

the state court docket in abatement until *Miller* was decided. In fact, in the most analogous context, retention of a case which is up for dismissal on a state court docket is *not* "prosecution" which violates the automatic stay injunction in bankruptcy. *See In re Cobb*, 88 Bankr. Rep. 119 (Bankr. W.D., Tex. 1988). Because Mr. Musslewhite has been found in contempt of an ambiguous order, due process would seem to require that the contempt orders be vacated. This is a question that deserves, we respectfully submit, the attention of this Court.

Second, the federal court exceeded its powers by converting a prohibitory injunction into a mandatory injunction in the context of a contempt proceeding. Again, the underlying injunction in this case only "prohibited" prosecution; it did not "mandatorily" require dismissal; in fact, it did not even mention "dismissal" vis-a-vis the state court action. Not only did the federal court hold Mr. Musslewhite in violation of the first order, but the federal court also modified the injunction in the contempt proceedings by "mandating" Mr. Musslewhite to dismiss his client's state court case or go to jail.

These orders conflict with those opinions which hold that negative "prohibitions" cannot be changed into affirmative and "mandatory" obligations in the context of contempt proceedings. *See e.g. NBA Properties, Inc.*, 895 F.2d at 33 (citing authorities).[7] Further, these orders

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[7] In striking down an order holding the "Franchisors" in contempt for failing to affirmatively police their franchisees in order to ensure that they did not sell products with NBA marks, in violation of a court-approved settlement agreement, Judge Breyer, on behalf of the First Circuit, stated:

> To find conduct that amounts to the forbidden "enabling" would amount to reading the Decree, phrased in terms of negative

conflict with those opinions which hold that a federal court cannot modify a prior injunction in the subsequent contempt hearing, without weighing relevant criteria or making factual findings. *See e.g. Int'l Ass'n of Machinists & Aerospace Workers v. Eastern Airlines, Inc.*, 849 F.2d 1481, 1486-87 (D.C. Dir. 1988).

The enforcement of an ambiguous injunction and the modification of that injunction in the contempt hearing, to require dismissal of a state court case, violates due process. This is a question of constitutional significance that, we submit, should be examined by the Court. Moreover, the Court should resolve the clear conflict between the Fifth Circuit in this case, on the one hand, and the First (*NBA Properties* and *Project B.A.S.I.C.*); D.C. (*Armstrong* and *Common Cause*); Second (*see Jacobson & Co. v. Armstrong Cork Co.*, 548 F.2d 438, 441 (2nd Cir. 1977), *Drywall Tapers and Painters of Greater N.Y. Local 1974 v. Local 530 of Operative Plasterers and Cement Masons Int'l Assn.*, 889 F.2d 389, 395 (2d Cir. 1989) cert. den. 110 S.Ct. 1478 (1990) and *Sterling Drug, Inc. v. Bayer A.G.*, 14 F.3d 733, 748 (2nd Cir. 1994)); Seventh (*see Ferrell v. Pierce*, 785 F.2d 1372, 1378 (7th Cir. 1986)); Third (*see Inmates of the Allegheny County Jail v. Wecht*, 754 F.2d 120, 129 (3rd Cir. 1985) and *Epstein Family Partnership v. K-Mart Corp.*, 13 F.3d 762, 771 (3rd Cir. 1994)); Sixth (*see Reed v. Cleveland*

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prohibitions, as if it imposed an affirmative obligation upon the Franchisors to police their franchisees. To do so would turn a "prohibitory" injunction into a "mandatory" injunction.....and, as we have previously said, we can find no legal basis for reading the Decree's language so broadly.

895 F.2d at 33.

*Bd. of Educ.*, 607 F.2d 749, 752 (6th Cir. 1979)); and Tenth (*see Keyes v. School Dist. No. 1, Denver, Col.*, 895 F.2d 659, 668 (10th Cir. 1990)) Circuits, on the other hand.[8]

### B. The Federal Court's "Dismissal" Mandate Violates Principles of Federalism

This case highlights one of the central concerns of federalism -- that federal courts cannot interfere with state court proceedings. Congress emphasized this concern by enactment of the so-called Anti-Injunction Act, 28 U.S.C. § 2283; *see Chick Kam Choo v. Exxon*, 486 U.S. at 145-151 (extended discussion of history and impact of Anti-Injunction Act on principles of federalism).

In this case, a federal court has ordered an attorney to dismiss his client's state court case. If such an order is condoned in this case, there will be nothing to prevent federal courts from issuing future orders of dismissals of other state court cases. It is easy to imagine that federal courts may use such new-found power to prevent litigation of unpopular, political or regional causes.

That is exactly what has happened here. The federal court below has sought to impose its forum non conveniens dismissal upon a state court which did not recognize the doctrine of forum non conveniens. Even though the state court had already decided to retain the case on its docket pending this Court's decision in *American Dredging Co. v.*

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[8] One of the rationale for all these decisions is the heavy burden upon federal courts, in issuing injunctive orders, to strictly comply with the requirements of Rule 65(d) that the injunction "shall set forth the reasons for its issuance; shall be specific in its terms; shall describe in reasonable detail....the act or acts sought to be restrained." See *International Longshoremen Assn.*, 389 U.S. at 75, 76.

*Miller*, the federal court chose to interfere with state court authority under the harshest power imaginable -- the threat to the attorney of loss of liberty.[9]

These "dismiss the state court case or go to jail" orders strike at the heart of federalism. It matters not whether the federal court orders the state court to dismiss the action, or whether the federal court orders the attorney to effect dismissal of the state court action -- the result is the same. This Court has long preserved the rights of state courts to conduct their own proceedings, free from federal interference. *See e.g. Pennzoil Co. v. Texaco* 481 U.S. 1 (1987); *Middlesex County Ethics Committee v. Garden State*

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[9] Indeed, the federal district court in effect chose to "sit as an appellate court," reverse the state court's reinstatement of the state court case and order the Petitioner to dismiss the case or go to jail. As noted in *Atlantic Coast Line Ry Co. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281, 287, 296, (1970), a federal district court does not have the power to sit as an appellate court with respect to decisions of a state court, even those involving federal questions such as preemption. ("Again, lower federal courts possess no power whatever to sit in direct review of state court decisions. If the union was adversely affected by the state court's decision, it was free to seek vindication of its federal right in the Florida appellate courts and ultimately, if necessary, in this Court." 398 U.S. at 296). Thus, even if Judge Werlien felt the state court should not have reinstated because of the then extant view of the Fifth Circuit that the federal forum non conveniens dismissal preempted the state court maritime action, it had no right or power to effectively reverse the state court's reinstatement decision by ordering Mr. Manangkalangi's attorney to dismiss his case or go to jail. As was further noted in *Atlantic Coast Line*, the appropriate procedure would have been for *Reading & Bates* to take the issue up through the state court appellate system and then to this Court, as was the precise procedure employed in *American Dredging*. Moreover, concepts of full faith and credit (see the Full Faith and Credit Act, 28 U.S.C. 1738) may also suggest that the federal court should not interfere with an order or judgment of the state court. See *Parsons Steel, Inc. v. First Ala. Bank*, 474 U.S. 518 (1986).

*Bar Ass'n*, 457 U.S. 423 (1982); *see also Atlantic Coast Line R. Co.* 398 U.S. at 297 ("Any doubts as to the propriety of a federal injunction against a state court proceeding should be resolved in favor of permitting state courts to proceed...The explicit wording of § 2283 itself implies as much and the fundamental principle of a dual system of courts leads inevitably to that conclusion").

These concerns come into full focus when it is seen that the very injunction order which underlies these contempt orders is not valid. This Court's recent opinion in *American Dredging Co. v. Miller* confirmed that federal forum non conveniens dismissals do *not* preempt state court maritime actions. Nonetheless, despite the acknowledged reason (by both the Petitioner and the state court) for retention of the state court action and the abatement of the state court action, to await the decision in *Miller*, the federal court chose to interfere in the state court proceeding by ordering dismissal under penalty of imprisonment.

Federalism does not permit such orders. The Anti-Injunction Act does not permit such orders. The doctrine of abstention does not permit such orders. The federal courts below have exceeded their powers and violated due process. These important issues, centered as they are upon the sacred doctrine of federalism, urgently need this Court's consideration.

## II. The Fifth Circuit Opinion Is In Direct Conflict With Those Circuits Which Would Hold That The Contempt Orders Are An Abuse Of Discretion

Even if such contempt orders were within the power of federal courts and do not violate due process, the contempt orders, under the circumstances presented here, constitute an abuse of that power.

The federal courts below abused their discretion by their failure to abate the contempt hearing until *Miller* was decided and by their failure to dissolve the permanent injunction after *Miller* was decided. *See e.g. Milkwagon Drivers Union of Chicago v. Meadowmoor Dairies, Inc.*, 312 U.S. 287, 298 (1941) (permanent injunction should be dissolved or modified when there has been a change in law).[10]

The federal courts below abused their discretion by their failure to recognize Mr. Musslewhite's "substantial compliance" with the injunction. *See Balla v. Idaho State Board of Corrections*, 869 F.2d 461, 465-66 (9th Cir, 1989). Mr. Musslewhite's retention of the state court action to preserve the status quo while *Miller* was pending cannot, by any stretch of semantics, be considered "prosecution" of the case. As Mr. Musslewhite stated to the federal court, if the *Miller* decision were unfavorable he would have no problem

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[10] See also *U.S. v. Swift & Co.*, 286 U.S. 106, 115 (1932) (Justice Cardoza expounded on how Rule 60(b)(5) codified the courts' inherent power to modify injunctions; he stated that "(a) continuing decree of injunction is subject always to adaptation as events may shape the need."); *System Fed'n No. 91 Employees' Dept. AFL-CIO v. Wright*, 364 U.S. 642, 647-652 (1961) (this case, involving the modification of an injunction based on "a change in decisional law", is very much like the present one with respect to whether the federal district court should, in view of this Court's decision in *Miller*, dissolve the injunction in this case pursuant to Rule 60(b)(5)); *Pasadena City Bd. of Educ. v. Sprangler*, 427 U.S. 434, 437 (1976) (discussing how a "final" or "permanent" "decree in equity", even though not appealed, is always subject to modification of the terms [thereof]....when the circumstances, whether of law or fact, obtaining at the time of its issuance have changed...."); *U.S. v. United Shoe Machinery Corp.*, 391 U.S. 244 (1968); *Rufo v. Inmates of Suffolk County Jail*, 427 U.S. 424, 437 (1992); and *U.S. v. U.M.W.*, 330 U.S. 258, 294-295 (1947) ("the right to remedial relief falls with an injunction which events prove was erroneously issued").

dismissing the action. The problem here is that the Respondents, fearful of the decision in *Miller*, moved for a premature dismissal of the state court action. Mr. Musslewhite had no intention to "prosecute" the action, in any affirmative sense, until *Miller* was decided in his client's favor and until the federal injunction was dissolved.

The federal courts below also abused their discretion by enforcing an ambiguous injunction. *See NBA Properties*, 895 F.2d at 32-33. And, the federal courts below abused their discretion by enforcing a modification of the injunction in the contempt proceeding, to affirmatively and "mandatorily" order dismissal when the underlying injunction was "prohibitory" only. *See Int'l Ass'n of Machinists*, 849 F.2d at 1486-87, and *NBA Properties*, 895 F.2d at 33.

Finally, the courts below - in ordering the most extreme of contempt sanctions (dismiss or go to jail) when such sanctions were patently unnecessary to "achieve the end" in question (the "end" in this case being to prevent litigation of the state court suit on its merits until this Court decided *Miller*) -acted in conflict with the decisions of this Court and other circuit courts. *See Spallone v. U.S.*, 493 U.S. 265, 275, 280 (1990); *Shillitani v. U.S.*, 384 U.S. 364, 371 (1966); and *Project B.A.S.I.C.*, 947 F.2d at 16. As observed in *Project B.A.S.I.C.*:

> Recognizing the contempt power's virility and damage potential, courts have created a number of prudential principles designed to oversee its deployment. For one thing, in levying contempt sanctions, the court must exercise the least possible power suitable to achieve the end proposed.

947 F.2d at p. 16.

The contempt orders below represent an arbitrary and unprecedented attempt to interfere with state courts and constitute an abuse of discretion. For all the reasons stated above, we respectfully request the Court to grant writ of certiorari in order to resolve the numerous conflicts among the circuits and to define, in no uncertain terms, the limits of federal power with respect to the awesome judicial tool of civil and criminal contempt.[11] In the final analysis, a dangerous precedent indeed would be created if the Court were to leave standing a contempt order directing an attorney to go to jail and remain there until he agrees to violate his ethical duty to his client by dismissing his client's state court case.

## Conclusion

The petition should be granted.

Respectfully submitted.

Benton Musslewhite
1250 Lyric Office Center
440 Louisiana
Houston, Texas 77002
Telephone (713)222-2288
Facsimile (713)222-0319

FOR HIMSELF AND
PETER MANANGKALANGI

[11] The judges of the Southern District of Texas have been especially prone to use the weapons of contempt and severe sanctions. *See e.g. U.S. v. O'Quinn*, 913 F.2d 221 (5th Cir. 1990); *Topalian v. Ehrman*, 3 F.2d 931 (5th Circ. 1993); and *U.S. v. Alexander*, 981 F.2d 250 (5th Cir. 1993).

**APPENDIX A**

U.S. COURT OF APPEALS
**F I L E D**
**JUN 16 1994**
CHARLES R. FULBRUGE III
CLERK
Iss'd 6-16

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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No. 93-2933

---

READING & BATES PETROLEUM CO.,
READING & BATES EXPLORATION CO., &
READING & BATES DRILLING CO.,
Plaintiffs-Appellees,

versus

BENTON MUSSLEWHITE, THE LAW OFFICES OF BENTON MUSSLEWHITE, and PETER MANANGKALANGI,
Defendants-Appellants.

---

Appeal from the United States District Court
for the Southern District of Texas

---

ON PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC

(Opinion 5/9/94, 5 Cir., F.3d )

( June 16, 1994 )

Before POLITZ, Chief Judge, DAVIS and WIENER, Circuit Judges.

PER CURIAM:

(x) The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, (Federal Rules of Appellate Procedure and Local Rule 35) the Suggestion for Rehearing En Banc is DENIED.

( ) The Petition for Rehearing is DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it, (Federal Rules of Appellate Procedure and Local Rule 35) the Suggestion for Rehearing En Banc is also DENIED.

( ) A member of the Court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service not having voted in favor of it, rehearing en banc is DENIED.

ENTERED FOR THE COURT:

/s/ Henry A. Politz
United States Chief Judge

REHG-6

CLERK'S NOTE
SEE FRAP AND LOCAL
RULES 41 FOR STAY OF THE
MANDATE.

**APPENDIX B**

U.S. COURT OF APPEALS
**F I L E D**
**MAY 09 1994**
CHARLES R. FULBRUGE III
CLERK

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

---

No. 93-2933

---

READING & BATES PETROLEUM CO., READING & BATES EXPLORATION CO. & READING & BATES DRILLING CO.,

Plaintiff-Appellee,

versus

BENTON MUSSLEWHITE, THE LAW OFFICES OF BENTON MUSSLEWHITE and PETER MANANGKALANGI,

Defendants-Appellants.

---

Appeal from the United States District Court for the Southern District of Texas

---

( CA-H-86-2671 )

Before POLITZ, Chief Judge, DAVIS and WIENER, Circuit Judges.

PER CURIAM:*

This matter is before the court on appeal of two contempt orders entered herein by the district court. Considering the pertinent parts of the record and the briefs of the parties, and finding neither error of law nor relevant abuse of discretion, the judgments appealed are AFFIRMED.

---

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

## APPENDIX C

DELIVERED DEC 15 1993
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
ENTERED
DEC 14 1993
Michael N. Milby, Clerk
By Deputy: /s/ illegible

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| READING & BATES PETROLEUM COMPANY, ET AL. | § | |
| Plaintiffs, | § | |
| V. | § | CIVIL ACTION |
| | § | NO. H-86-2671 |
| BENTON MUSSLEWHITE, ET AL., | § | |
| Defendants. | § | |

ORDER OF CONTEMPT

This matter came on to be heard on the Motion of Plaintiff Reading & Bates Petroleum Company, Reading & Bates Exploration Company, Reading & Bates Drilling Company for a judgment in contempt against Defendant Benton Musslewhite and the Law Offices of Benton Musslewhite, Individually and as Attorneys for Pete Manangkalangi. The Court, after considering the evidence and testimony presented by the parties, and arguments and authorities, dictated in open Court Findings of Fact and Conclusions of Law, finding among other things that

Defendant Benton Musslewhite, the Law Offices of Benton Musslewhite, Individually and as Attorneys for Manangkalangi, are in contempt of this Court for having failed and refused to obey the injunctive Order contained in the FINAL JUDGMENT signed in this cause by Chief Judge James DeAnda, entered March 5, 1992.

It is therefore ORDERED:

1. That Benton Musslewhite, Individually and as Attorneys for Peter Manangkalangi, purge himself of this contempt of Court by taking the following actions:

(a) Bring to the attention of the Judge of the 164th Judicial District Court of Harris County the Final Judgment of this Court above-referenced, including the injunctive order contained therein and of the need for Defendants to purge themselves of contempt of this Court by withdrawing their previous motion filed by Benton Musslewhite for reinstatement of Cause No. 83-75297 and obtaining reentry of an Order of Dismissal such as that entered by the state district court on July 15, 1993.

(b) Fully and completely comply with all provisions of the Court's Final Judgment entered March 5, 1992, by causing Cause No. 83-75297 in the 164th Judicial District Court of Harris County, Texas, to be DISMISSED and to CEASE and DESIST in prosecuting any claims which Defendants are prohibited by said Final Judgment from prosecuting in any state or federal court in this country.

(c) File with this Court no later than December 17, 1993, a sworn statement in this matter setting forth the steps that have been taken in order to purge Defendants of contempt, to obtain the reversal of the Order reinstating the state cause No. 82-75297, which had granted Defendants' state court motion that had been filed in contempt of this Court, and to obtain dismissal of that action.

(d) Reimburse Plaintiffs for all attorneys' fees and costs of litigation incurred in this cause in connection with this contempt proceeding. Plaintiffs' counsel shall file and serve upon Defendants an affidavit of such attorneys' fees and costs no later than December 17, 1993; but Plaintiffs' Motion for Costs and Attorneys' Fees incurred in Cause No. 83-75297 in the 164th Judicial District Court of Harris County, Texas, is DENIED.

2. That in the event the above orders have not been complied with on or before December 17, 1993, then a hearing will be held before this Court in Courtroom 9D, United States Courthouse, 515 Rusk Street, Houston, Texas on December 20, 1993, at 9:00 a.m., in order that Defendants may show cause why this Order has not been complied with, and why further sanctions should not be imposed to compel Defendants to purge themselves of contempt.

3. That the parties shall promptly notify the Court as soon as the above Orders have been complied with so that the setting for December 20, 1993, can be canceled.

SIGNED this 13th day of December. 1993.

/s/ Ewing Werlein, Jr.
EWING WERLEIN, JR.
UNITED STATES DISTRICT JUDGE

## APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| READING & BATES | )( | |
| PETROLEUM CO., | )( | |
| ET AL, | )( | |
| Plaintiffs | )( | |
| | )( | C.A. NO. |
| VS. | )( | H-86-2671 |
| | )( | |
| PETER | )( | |
| MANANGKALANGI, | )( | |
| ET AL, | )( | |
| Defendants | )( | |

**ORDER OF CONTEMPT**

On the 20th day of December came on for further hearing and consideration the Motion of Plaintiffs Reading & Bates Petroleum Company, and others, for a judgment of contempt against Defendant Benton Musslewhite ("Musslewhite") and the Law Offices of Benton Musslewhite, Individually and as Attorneys for Peter Manangkalangi. After hearing and considering additional evidence regarding Musslewhite's conduct in the days following this Court's Order signed December 13, 1993, and hearing and considering the arguments and authorities presented by counsel, the Court finds from clear and convincing evidence, received both at the hearing on December 13, 1993 and on December 20, 1993, that Musslewhite is in contempt of this Court for having failed and refused to obey the injunctive Order contained in the Final Judgment signed in this case by Chief Judge James DeAnda, entered March 5, 1992; that

Musslewhite specifically violated the permanent injunction against his prosecution of Cause No. 83-75297 in the 164th Judicial District Court of Harris County, Texas, by filing in that action a "Motion for New Trial, Rehearing, To Reconsider Dismissal Order and to Reinstate this Case," and that Musslewhite filed the foregoing motion after the state judge had dismissed No. 83-75297 on July 15, 1993. The first step in the prosecution of any lawsuit is to file the lawsuit. Musslewhite successfully moved to reinstate No. 83-75297 as a pending case on the docket of the state district court after it had been dismissed. Such is an act of prosecution of the case that is in direct violation of the permanent injunction contained in the Final Judgment entered by Chief Judge DeAnda.

This Court's Order signed December 13, 1993, ordered Musslewhite to purge himself of such contempt and allowed a reasonable time for him, without further contempt and allowed a reasonable time for him, without further sanctions, to effect the restoration of the status quo ante Musslewhite's contempt. Musslewhite has failed and refused to purge himself of such contempt, and it continues in direct violation of the Final Judgment of this Court entered March 5, 1992. Accordingly, it is ORDERED that Respondent Benton Musslewhite report to the office of the United States Marshall for the Southern District of Texas, 10th Floor, U.S. Courthouse, Houston, Texas 77002, at 8:00 A.M. on Wednesday, December 22, 1993, to be held in custody from 8:00 A.M. until 5:00 P.M. on that day; and that Respondent Benton Musslewhite continue to report to the U.S. Marshall in such manner at 8:00 A.M. on each and every business day thereafter (Saturdays, Sundays, and legal holidays of the United States excepted), to be held in custody from 8:00 A.M. until 5:00 P.M. on each such day continuously until Respondent Benton Musslewhite shall have purged himself of contempt by securing restoration of the status quo ante his

act of contempt, that is, by securing reinstatement of the order of dismissal of Cause No. 83-75297, such as had been entered by the state court on July 15, 1993, whereupon this Court will release him from the personal custody requirements of this Order.

Respondent Benton Musslewhite's Motion to Stay this Order pending his appeal thereof to the U.S. Court of Appeals for the Fifth Circuit is DENIED.

The Clerk will enter this Order, providing a correct copy to all counsel of record.

SIGNED at Houston, Texas, this 21st day of December, 1993.

/s/
EWING WERLEIN, JR.
U.S. DISTRICT JUDGE

## APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| READING & BATES | )( | |
| PETROLEUM CO., | )( | |
| ET AL, | )( | |
| Plaintiffs | )( | |
| | )( | C.A. NO. |
| VS. | )( | H-86-2671 |
| | )( | |
| PETER | )( | |
| MANANGKALANGI, | )( | |
| ET AL, | )( | |
| Defendants | )( | |

**FINAL JUDGMENT**

Pursuant to the Court's orders of January 22, 1993 and of this date, the Court

ORDERS that final summary judgment is GRANTED in favor of Plaintiffs Reading & Bates Petroleum Company, Reading & Bates Exploration Company and Reading & Bates Drilling Company against Defendant Peter Manangkalangi, Benton Musslewhite, and the Law Offices of Benton Musslewhite, individually and as attorneys for Peter Manangkalangi. The Court

ORDERS that Defendants are PERMANENTLY ENJOINED from prosecuting Cause No. 83-75297 in the 164th Judicial District Court of Harris County, Texas or any claims arising from injuries suffered by Peter Manangkalangi on the offshore oil well workover operations in the Java Sea,

Indonesia on June 21, 1977 in any state or federal court in this country. Furthermore, Defendants shall pay costs of court, as well as Plaintiffs' attorney's fees in the amount of $4,564.50, with post judgment interest in the amount of 4.21% per annum.

SIGNED this 3rd day of March 1992, at Houston, Texas.

_____

JAMES DeANDA, CHIEF JUDGE
UNITED STATES DISTRICT COUNT

## APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| READING & BATES PETROLEUM CO., ET AL, Plaintiffs | )( | |
| | )( | C.A. No. |
| VS. | )( | H-86-2671 |
| PETER MANANGKALANGI, ET AL, Defendants | )( | |

**ORDER**

Pending before the Court in the above referenced action for a permanent injunction to prevent Defendants Peter Manangkalangi and his attorneys from further prosecution of alleged claims are Plaintiffs Reading & Bates Petroleum Company, Reading & Bates Exploration Company, and Reading & Bates Drilling Company's renewed motion for summary judgment and permanent injunction and supplement to it. This case was stayed by agreement in 1986, and the underlying state court action enjoined, pending the outcome of the appeal of a related action, Chick Kam Choo v. Exxon Corp., wherein the issue was whether a federal district court may enjoin a state court admiralty proceeding from relitigating a federal choice-of-law determination made when the federal court decided to dismiss on the grounds of forum

non conveniens. Choo has been resolved[1] insofar as it relates to this action. The Court lifted the stay on this action on September 29, 1991 and reinstated it on the Court's active docket.

In Choo, a widow of a shipwright brought suit under the Jones Act, the Death on the High Seas Act (DOSHA), the general maritime law of the United States, and the Texas Wrongful Death Statutes, in federal district court for damages arising from the accidental death of her husband while he was repairing a ship. The district court three years later, in 1980, granted summary judgment to the defendants on the Jones Act claim because the deceased was not a "seaman" and on the DOSHA because the accident did not occur on the high seas but in port. The defendants also moved for a forum non conveniens dismissal and argued that because of a lack of substantial contacts with the United States and because Singapore law governed this case, the suit should be dismissed. The district court agreed and dismissed the rest of the case on forum non conveniens grounds, provided that the plaintiff file suit in Singapore. The Fifth Circuit affirmed. 699 F.2d 693 (5th Cir. 1983), cert. denied, 464 U.S. 826 (1983).

Instead, the plaintiff filed suit in Texas state court under the Texas Wrongful Death Statutes and under Singapore law. The defendants removed the suit to federal court on the basis of diversity. The Fifth Circuit ruled that diversity did not exist and returned it to the district court to remand it to state court. The defendants commenced a new suit in federal district court and obtained a permanent injunction barring plaintiff and her attorneys from suing the

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[1] Exxon Corp. v. Chick Kam Choo, 817 F.2d 307 (5th Cir. 1987), rev'd, 485 U.S. 140 (1988), remanded to district court, 849 F.2d 910 (5th Cir. 1988).

defendants in Texas courts for damages arising out of his alleged wrongful death, i.e., for relitigating in state court any of the issues finally decided in 1980. The defendants appealed, arguing that the federal Anti-Injunction Act, 28 U.S.C. Sec. 2283, which in most cases precludes federal courts from interfering with state court proceedings, barred such an injunction. The Fifth Circuit affirmed the district court and held that the injunction was proper under the relitigation exception which allows a federal court to enjoin state court proceedings "to protect or effectuate its judgment." The Fifth Circuit also ruled that the "reverse-Erie" doctrine of uniformity,[2] established in Offshore Logistics, Inc. v. Tallentire, 477 U.S. 207, 222-23 (1986), mandated that the federal doctrine of forum non conveniens preempts state law.

The Supreme Court subsequently dissolved the injunction, holding that it was overbroad because it barred a state court from entertaining the Singapore law claims. The relitigation exception should apply only when the issues have actually been decided by the federal court. In Choo, the peremption issue was not litigated by the district court and the claim under Singapore law was not resolved but merely dismissed because the forum was inconvenient. Furthermore application of the federal forum non conveniens doctrine does not determine whether Texas state courts are an appropriate forum for the Singapore law claims. Texas has a broad "open Courts" provision in its Constitution, Art. 1, Sec. 13, that allows filing of any suit for personal injury or death. Although the Fifth Circuit held that state law had been preempted under the "reverse-Erie" doctrine, that issue was not litigated by the district court. The Supreme Court,

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[2] The "reverse-Erie" doctrine "requires that the substantive remedies afforded by the states conform to governing federal maritime standards." Offshore Logistics, 477 U.S. at 223.

noting that when a state court is faced with a federal issue, rules that "the proper course is to seek resolution of that issue by the state court." 108 S.Ct. at 1691. It therefore held that the defendants had to raise their argument regarding the preemptive force of federal maritime forum non conveniens before the state court entertaining the Choo suit. Finally, the high court stated that the Texas state law claims had been adjudicated when the federal district court in 1980 rules under choice-of-law authority that Singapore law governs the plaintiff's suit. Thus an injunction against relitigation of the claim under Texas law is permissible under the Anti-Injunction Act.

Since Choo was handed down, the Texas Supreme Court has held that the legislature abolished the doctrine of forum non conveniens in suits relating to death or injury occurring outside of Texas and that the statutory right to bring such suits in Texas bars dismissal of the claims on the ground of an inconvenient forum. Dow Chemical Co. v. Alfaro, 786 S.W.2d 674 (Tex. 1990), cert. denied, 111 S.Ct. 671 (1991); Tex.Civ.Prac. & Rem.Code Ann. Sec. 71.031 (Vernon 1986). Moreover the Fourteenth Court of Appeals has now reversed the state trial court's determination that Choo's Singapore law claim was preempted by federal maritime law and found that Texas state court is an available forum. Chick Kam Choo v. Exxon Corp., 1991 WL 149274 (Tex.App.--Houston [14th Dist.] 1991).

In the case before the undersigned judge Peter Manangkalangi, a citizen of Indonesia, represented by attorney Benton Musslewhite, first filed a federal civil action, H-79-1253, on June 19, 1979 for damages for an injury he suffered on offshore oil well work-over operations in the Java Sea, Indonesia. He alleged negligence and gross negligence against the Reading & Bates entities and unseaworthiness of a barge, the Giant Mariner. On

September 16, 1983, the presiding judge entered a final judgment and a memorandum and order stating that Manangkalangi did fail to state a cognizable claim under the Jones Act, the general maritime law of the United States, or other applicable American law, and that Indonesian law applies. In the order and in a conditional final judgment the Court granted Defendants' supplemental motion to dismiss for forum non conveniens, provided that a new action was instituted in Indonesia within six months and provided that Defendants agreed to submit to the jurisdiction of an Indonesian court and waive any statute-of-limitations defense. The order stated that if Defendants failed to comply, the dismissing court would resume jurisdiction over the suit. On October 13, 1983 the judgment was amended to allow Manangkalangi ninety days to refile the suit in Indonesia and stated that if he failed to do so, Defendants could move for final judgment. After he failed to do so, on Defendants' motion for entry of final judgment the court resumed jurisdiction, gave Manangkalangi an opportunity to respond, and on April 5, 1984, entered another final judgment, dismissing Manangkalangi's entire suit with prejudice on the ground of forum non conveniens.

Instead of in Indonesia, Manangkalangi refiled his suit in the 164th Judicial District of Harris County, Texas, Cause No. 83-75297, and it is still pending after a removal and a remand.

The Reading & Bates entities filed the instant suit, H-86-2671, to permanently enjoin Manangkalangi and his attorneys from pursuing the state court action, based on the All Writs Statute and the relitigation exception to the Anti-Injunction statute, 28 U.S.C. Sec. 1651 and Sec. 2283, in aid of the court's jurisdiction or to protect or effectuate the court's prior judgment and to protect Plaintiffs from repetitive litigation. The undersigned judge entered an

agreed stay order on November 26, 1986 enjoining the underlying state court action as well as staying the instant suit pending the appeal of Chick Kam Choo.

Now that the Supreme Court has ruled on Choo, Plaintiffs reurge their motion for summary judgment, arguing that this court can enjoin relitigation of issues previously ruled on in an earlier federal action involving the same action. 28 U.S.C. Sec. 1651 and Sec. 2283. Here, claim Plaintiffs, because the Court's final judgment dismissed with prejudice all of Manangkalangi's claims. the res judicata doctrine of merger, bar, and issue preclusion bar those claims and any others that Manangkalangi might raise. The Choo case held that where a final federal judgment has been entered, a federal court may protect that ruling by enjoining a state court from considering the claim[s]. 486 U.S. at 150. They thus request this Court to enjoin permanently Manangkalangi and his attorneys from prosecuting any suit in federal or state court against Plaintiffs for any injuries arising out of oil well work-over operations in the Java Sea, off of Indonesia on June 21, 1977.

Plaintiffs' supplement cites Quintero v. Klaveness, 914 F.2d 717, 722 (5th Cir. 1990), cert. denied, 111 S.Ct. 1322 (1991), for the rule that a district court has discretion to enjoin relitigation of a choice-of-law determination made pursuant to a forum non conveniens dismissal of a foreign seaman's personal injury suit and that a forum non conveniens dismissal can be granted with prejudice. The Fifth Circuit noted that the relitigation exception arose from concerns about res judicata and collateral estoppel, and was intended to bar costly and judicially wasteful relitigation of issues in state court. 914 F.2d at 720-21.

Plaintiffs also cite Ikospentakis v. Thalassic Steamship Agency, 915 F.2d 176 (5th Cir. 1990) for the proposition

that a federal holding related to a forum non conveniens dismissal preempts state decisions in maritime matters. The Court will discuss this case further infra.

Defendants contest Plaintiffs' reading of the cases they cite as authority. First, Defendants point out, and the Court agrees, that the United States Supreme Court in Choo said that the preemption issue had to be presented to the Texas state trial court, where Choo's case was pending. Defendants also cite In re: Air Crash New Orleans, 821 F.2d 1147, 1163-64 (5th Cir. 1987) (en banc) as authority for treating maritime cases the same as all other federal cases for the doctrine of forum non conveniens. Moreover, Defendants urge, the United States Supreme Court, in Missouri v. Mayfield, 340 U.S. 1 (1950) (Because Employers' Liability Act allows state courts to entertain suits arising under it, the Missouri State Court may decide under state law if forum non conveniens applies), held that the federal forum non conveniens law does not preempt the state forum non conveniens law. Defendants then cite Alfaro, 786 S.W.2d 674 and the Fourteenth Court of Appeals, Choo, 1991 WL 149274, as clear support for their argument against enjoining the state court action insofar as the Indonesian law claim is concerned.

The problem here is that the Fifth Circuit, in a different case, has ruled contrary to the Texas court in determining that "federal maritime defense of forum non conveniens is constitutionally supreme in a maritime or Jones Act case over state laws that do not recognize this doctrine."[3] Ikospentakis, 915 F.2d at 180, citing and endorsing its earlier holding in Exxon Corp. v. Chick Kam Choo, 817 F.2d 307 (5th Cir. 1987), rev-d on other grounds.

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[3] The Supreme Court in Choo, 486 U.S. 140, 108 S.Ct. at 1691, expressly did not rule on the preemption issue.

486 U.S. 140 (1988). In Ikospentakis, the Fifth Circuit noted that although courts in Louisiana (like the Fourteenth Court of Appeals in Texas) have refused to recognize the preemptive force of the federal doctrine, "[a]t some point, Louisiana must bend to the federal court's construction of federal law." Id. and n.3. The Circuit found that the defendants would suffer "clear legal prejudice" in being stripped of a forum non conveniens defense, available to them in federal court, in violation of the supremacy clause. Id. at 178-79. Given the appellate court's holding in Quintero, 914 F.2d at 722, that a federal district court's forum non conveniens dismissal may be given preclusive effect by designating it as "with prejudice,"[4] this Court, which is bound to follow the Circuit, must conclude that Plaintiffs' motion for summary judgment and permanent injunction should be granted.

According, the Court ORDERS the following:

(1) Plaintiffs' motion for summary judgment and for permanent injunctive relief is GRANTED;

(2) Defendants Peter Manangkalangi and his attorneys are PERMANENTLY ENJOINED from prosecuting Cause No. 83-75297 in the 164th Judicial District of Harris County, Texas or any claims arising from injuries suffered by Peter Manangkalangi on the offshore oil well workover operations in the Java Sea, Indonesia on June 21, 1977 in any state or federal court in this country; and

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[4] The federal district court gave Manandkalangi more than a sufficient time to refile his suit in Indonesia before deciding that further delay in issuing an unconditional final judgment, when the plaintiff's conduct to protect his suit wa so dilatory, would be fruitless.

(3) Defendants shall pay costs of Court. Plaintiffs have requested reasonable attorney's fees. The Court further

ORDERS Plaintiffs' counsel to submit by February 7, 1992 an affidavit supporting a request for attorneys' fees that complies with the requirements of Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974). Defendants shall file any objections by February 17, 1992. The Court will then rule on the record and issue a final judgment.

SIGNED this 22nd day of January, 1992, at Houston, Texas.

/s/
James DeAnda
CHIEF JUDGE
UNITED STATES DISTRICT COURT

## APPENDIX G

### AMENDMENT V - GRAND JURY INDICTMENT FOR CAPITAL CRIMES; DOUBLE JEOPARDY; SELF-INCRIMINATION; DUE PROCESS OF LAW; JUST COMPENSATION FOR PROPERTY

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces or in the Militia. when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

### AMENDMENT 14

**Section 1. Citizens of the United States.**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## APPENDIX H

### § 2283. Stay of State court proceedings

A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgment.

## APPENDIX I

**INJUNCTIONS** **RULE 65**

**(d) Form and Scope of Injunction or Restraining Order.** Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.